

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

DONNA CURLING, et al.,

Plaintiffs,

v.

BRIAN KEMP, et al.,

Defendants.

CIVIL ACTION FILE

NO. 1:17-CV-02989-AT

NOTICE FROM DEFENDANTS
REGARDING DOC. 225 AND PROPOSED BRIEFING SCHEDULE
CONCERNING THE THIRD AMENDED COMPLAINT

Pursuant to the Court's Order of June 13, 2018 (Doc. 225), the State and Fulton County Defendants (hereinafter "Defendants") propose a "schedule regarding Defendants' responses to the Third Amended Complaint and any subsequent briefing" (*id.*), incorporating the following dates:

1. *Defendants' Memorandum of Law/Motion*: Defendants will file a Memo and Motion to Dismiss that addresses the modified allegations and legal theories of the Third Amended Complaint by not later than July 3, 2018. See F.R.C.P. 12(a)(1)(A)(i).
2. *Coalition Plaintiffs' Response*: Counsel for the State Defendants has requested Leave from July 6-July 23, during which time the attorney with primary responsibility will be out of the country on a family vacation. Doc. 140 (letter requesting leave). Consequently, the Defendants are flexible as to the time for a response from Plaintiffs.
3. *Defendants' Reply*: Given Mr. Salter's absence from the practice of law and out-of-country travel from July 6 to July 23, the Defendants would

appreciate the Court extending the normal time for filing any reply until fourteen days after July 23 (i.e. August 6, 2018).

Plaintiffs circulated a scheduling proposal via email with a table attachment on June 13, 2018. *See, e.g.*, Ex. A (June 13, 2018 email); *see also* Ex. B (table). Because Plaintiffs stated they would submit their proposal as a “competing alternative” if the Defendants objected, Defendants conferred with counsel for the Plaintiffs to express substantially the concerns discussed below. *See, e.g.*, Ex. C (June 18, 2018 email). The Defendants cannot join in Plaintiffs’ proposed schedule and ask the Court to reject it.

1. Plaintiffs’ scheduling proposal goes far beyond the Court’s directive.

This Court’s Order (Doc. 225), sought a schedule for briefing on the Third Amended Complaint. Plaintiffs’ proposal purports to set deadlines for essentially the entire case, controlling issues such as initial discovery disclosures under Rule 26(a)(1), deposition dates, final hearing date, etc. *See* Ex. B. These deadlines appear to operate independently of when, or whether, the Court issues its order on the Motion(s) to Dismiss. *Id.* Plaintiffs fashioned their schedule without prior consultation with counsel for the Defendants, as illustrated by the multiple deadlines during a time when Mr. Salter is on leave from the practice of law from July 6 through July 23 due to a long-scheduled family vacation outside the country.

2. Plaintiffs' proposed schedule is not practical given the time available.

Plaintiffs' scheduling proposal is built around the untenable premise that it is feasible between now and the November 2018 elections to brief the Third Amended Complaint, receive an order, conduct discovery, brief a motion for preliminary injunction, schedule a trial, and receive an injunction in time to implement it. *See* Exs. A-B. Plaintiffs' proposal shows insufficient concern for the inconvenience and/or disruption it would cause Defendants regarding the July Runoff and preparations the Defendants must make well in advance of the November 2018 election.¹ Since the fall of last year, the Defendants have been accommodating as this matter was delayed while Plaintiffs spent months sorting out some internal difficulties. There was a time this case could have been vehicle for a hearing as to the Nov. 2018 elections. But no longer.

This Court has assessed the realities Plaintiffs cannot bring themselves to admit. More than a month ago, the Court said: "I will reiterate again that it would be in my mind *virtually impossible to have a trial before the November election in time to do anything with that.*" May 10, 2018 Trans. 17-18 (emphasis supplied). Yet, despite the passage of a month since

¹ Many of Plaintiffs' deadlines overlap the July 2018 runoff election. Advanced voting in the runoff begins July 2. The election date is July 24.

the Court said those things, Plaintiffs propose to ignore what the Court has said and demand a schedule that has no realistic chance of being actualized.

3. Plaintiffs' scheduling proposal fails to account for the impact of immunity and jurisdictional issues.

Third, Plaintiffs' proposal sidesteps the impact of significant issues of immunity and jurisdictional issues. The State Defendants have made clear their position that these significant issues remain in the case. *See* Doc. 191. Of course, these issues have the potential to cause a direct appeal. *Summit Medical Assocs., P.C. v. Pryor*, 180 F.3d 1326 (11th Cir. 1989). Presumably the Court requested a re-briefing that would adjust Defendants' arguments on these issues in light of the revised allegations and theories of the Third Amended Complaint. As the Court stated during the Conference on May 10, "at this juncture . . . , the state has made clear at the very least that they have planned to reassert their sovereign immunity defenses no matter what. So there is no avoiding the fact that there is a substantial order that I have to deal with. And that is just—that is the way it is." May 10, 2018 Trans. at 18.

In conclusion, the Court asked the parties to confer upon a briefing schedule, presumably expecting to receive a realistic schedule for briefing on the Motion to Dismiss. Under the circumstances, the Defendants respectfully suggest their proposed schedule meets that standard while Plaintiffs' does not.

This 19th day of June, 2018.

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/s/John F. Salter

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CERTIFICATE OF COMPLIANCE

I hereby certify that I have read the Court's Standing Order in Cases Proceedings Before the Honorable Amy Totenberg and that I will comply with its provisions during the pendency of this litigation.

/s/John F. Salter

/s/David R. Lowman

CERTIFICATE OF COMPLIANCE WITH LOCAL RULE 5.1

The undersigned hereby certifies that the foregoing document has been prepared in accordance with the font type and margin requirements of Local Rule 5.1 of the Northern District of Georgia, using a font type of Century Schoolbook and a point size of 13.

/s/John F. Salter

/s/David R. Lowman

CERTIFICATE OF SERVICE

I hereby certify that on this date I have electronically filed the foregoing **NOTICE FROM DEFENDANTS REGARDING DOC. 225 AND PROPOSED BRIEFING SCHEDULE CONCERNING THE THIRD AMENDED COMPLAINT** with the Clerk of Court using the CM/ECF system, which will send email notification of such filing to all attorneys of record.

This 19th day of June, 2018.

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